

GILBERT GUZMAN,  
Petitioner,  
vs.  
M. S. EVANS, Warden,  
Respondent.

No. C 06-5241 JSW (PR)  
**ORDER ADDRESSING PENDING  
MOTIONS**  
  
(Docket Nos. 29, 33, 39, 44, 46)

Thereafter, Petitioner filed a traverse to Respondent's answer on June 16, 2008. He has also filed a motion to schedule an evidentiary hearing (docket no. 44). Petitioner's motion for an evidentiary hearing is DENIED as premature (docket no. 44). The Court will reconsider the motion when the petition is considered on the merits.

1           Petitioner has also filed a motion seeking appointment of counsel (docket no. 46).  
2           However, the Sixth Amendment's right to counsel does not apply in habeas corpus  
3           actions. *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). 18 U.S.C. §  
4           3006A(a)(2)(B) authorizes appointment of counsel to represent a habeas petitioner  
5           whenever "the court determines that the interests of justice so require and such person is  
6           financially unable to obtain representation." The decision to appoint counsel is within  
7           the discretion of the district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.  
8           1986), *cert. denied*, 481 U.S. 1023 (1987); *Knaubert*, 791 F.2d at 728.

9           The courts have made appointment of counsel the exception rather than the rule  
10          by limiting it to: (1) capital cases; (2) cases that turn on substantial and complex  
11          procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or  
12          mentally or physically impaired petitioners; (4) cases likely to require the assistance of  
13          experts either in framing or in trying the claims; (5) cases in which petitioner is in no  
14          position to investigate crucial facts; and (6) factually complex cases. *See generally* 1 J.  
15          Liebman & R. Hertz, *Federal Habeas Corpus Practice and Procedure* § 12.3b at 383-86  
16          (2d ed. 1994). Appointment is mandatory only when the circumstances of a particular  
17          case indicate that appointed counsel is necessary to prevent due process violations. *See*  
18          *Chaney*, 801 F.2d at 1196; *Eskridge v. Rhay*, 345 F.2d 778, 782 (9th Cir. 1965), *cert.*  
19          *denied*, 382 U.S. 996 (1966).

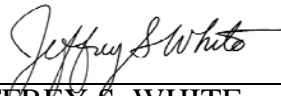
20          The denial of appointment of counsel is reviewed for abuse of discretion. *See*  
21          *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987) (no abuse of discretion where  
22          pleadings illustrate that petitioner had good understanding of issues and ability to present  
23          forcefully and coherently his contentions); *Bashor*, 730 F.2d at 1234 (although petitioner  
24          was over 60 years of age and had no background in law, he thoroughly presented issues  
25          in petition and accompanying memorandum).

26          In the motion, Petitioner argues that the prison's restrictions on his possession of  
27          legal materials, cases and paper denies him meaningful access to the courts and,  
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1 therefore, requires that pro bono be appointed to represent him. However, although  
2 Petitioner has established the difficulties of litigating for a *pro se* petitioner, he has not  
3 established that he meets the standard of exceptional circumstances necessitating the  
4 appointment of counsel. Through his pleadings, Petitioner has shown that he is able to  
5 effectively raise and address the issues before the Court. Therefore, the Court concludes  
6 that the interests of justice do not require appointment of counsel at this time.  
7 Accordingly, Petitioner's motion for appointment of counsel (docket no. 46) is DENIED  
8 without prejudice.

9 IT IS SO ORDERED.

10 DATED: February 12, 2009

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13 JEFFREY S. WHITE  
14 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

GILBERT GUZMAN,  
Plaintiff,

Case Number: CV06-05241 JSW

**CERTIFICATE OF SERVICE**

v.

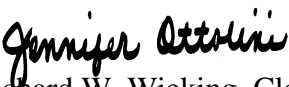
M.S. EVANS et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 12, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gilbert Guzman  
Salinas Valley State Prison  
T65316  
P.O. Box 1050  
Soledad, CA 93960

Dated: February 12, 2009

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk